THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.17980 of 2001

ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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The petitioner seeks a writ of Certiorari to quash the judgment, dated 10-07-2001, in L.G.C.No.5 of 1999 passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act (for short, 'the Act'). The respondents 2 and 3 herein are the applicants, who filed the application against the petitioner as the sole respondent under Section 8 of the Act seeking her eviction on the premise that she grabbed the land, as detailed *inter alia* in the application.

The case of the applicants was that plot Nos.63 and 64 admeasuring 292 and 305 square yards respectively covered by Sy.No.99 of Mallapur Village and situate in Dattatreya Colony within Kapra Municipality were originally owned by one, K.Rajarathnam, S/o K.Samuel. The said Rajarathnam sold plot No.63 under a registered sale deed, dated 31-07-1989, to the first applicant and under registered sale deed, dated 02-04-1990, to the second applicant and delivered possession of the respective plots to them and that the applicants 1 and 2 had been in peaceful possession and enjoyment of their respective plots since the dates of their purchase. Thus, plots were lying vacant till 1998. In the month of May, 1998, the respondent with the aid of her workers constructed temporary shed with ACC roofing sheets in the application schedule property and started running a school therein. The applicants, on coming to know of it, visited the schedule mentioned property on 30-08-1998 and demanded the respondent to vacate from the premises. But, the respondent refused to vacate the said property and warned the applicants with dire

consequences. On 05-09-1998, the respondent got a legal notice issued to the first applicant with all false allegations with an intent to grab the land and thus she committed the act of land grabbing.

The case of the respondent was that the owner of plots 63 and 64, by name, Rajarathnam entered into an agreement of sale with her on 27-02-1985 for a consideration of Rs.20,000/-. An amount of Rs.10,000/- was paid initially as part consideration under a receipt, dated 27-07-1985. The said Rajarathnam delivered possession of the plots to the respondent on 08-07-1986. She paid another sum of Rs.6,000/- to the said Rajarathnam under a receipt, dated 08-07-1986, when the said Rajarathnam delivered his title deed, dated 12-08-1968 and other documents to her, under which he purchased the application schedule property from one, Dr.N.P.Kamat. Thus, by 08-07-1986, she paid an amount of Rs.16,000/- to the owner and there remained a balance of Rs.4,000/- to be paid, which was agreed to be paid at the time of registration. However, the said Rajarathnam could not be traced since then and his whereabouts were not known. Therefore, she could not pay the balance consideration and obtain a registered sale deed from him. She made constructions on the property in dispute in the year 1988 itself for running a school therein and thus she had been running the school in the application schedule property since 1988 and therefore she was not a land grabber. She got a legal notice, dated 05-09-1998, issued to the applicant No.1 with correct facts, when he tried to interfere with her possession of the property. She then filed a suit against the owner, Rajarathnam, for specific performance of the agreement of sale on 26-02-1997. The plaint was returned by the Court on 14-03-1997. Since, the bundle was misplaced in her lawyer's office, the plaint was re-presented on 29-01-1998 with a petition to condone the delay in re-presentation. Thus, the respondent had not committed any land grabbing.

On the above pleadings, the following issues were settled for

enquiry by the Special Court:

"1) Whether the applicants are the owners of the application schedule property?

2) Whether the rival title set up by the respondent is true, valid and binding on the applicants?

3) Whether the respondent is a land grabber within the meaning of Section 2 (d) and (e) of Act XII of 1982?

4) To what relief?"

At the time of enquiry, three witnesses were examined on the side of the applicants, besides getting Exs.A1 to A7 marked. Four witnesses were examined on the side of the respondent, besides getting Exs.B1 to B6 marked.

Appreciating the evidence thus adduced on either side, the learned Special Court was of the view that the applicants 1 and 2 were the owners of the plot Nos.63 and 64 respectively and the rival title set up by the respondent was not true and that respondent was the land grabber within the meaning of Section 2 (d) and (e) of the Act. The learned Special Court reached the said conclusions as in its perception the original owner in collusion with the respondent, being his niece, brought into existence Exs.B1 and B2 to illegally take possession of the application schedule land and the acts of bringing into existence bogus documents in the shape of Exs.B1 and B2 to defeat the registered sale deeds and illegally taking possession of the lands of the applicants and raising unauthorized constructions thereon would constitute an activity of land grabbing. Eventually, the application was allowed by the learned Special Court directing the respondent to deliver vacant possession of the land in dispute, after removing the unauthorized structures existing thereon, within eight months from the date of order. As aforesaid, the writ petitioner is assailing the said order in the instant writ petition.

Sri J.Prabhakar, learned counsel for the petitioner, would submit that having regard to the rival contentions over the property in dispute it is not a case of land grabbing.

Per contra, the learned counsel appearing for the respondents 2

and 3 would contend that the petitioner in collusion with R.W.4 created documents and that itself is an indicia of an act of land grabbing.

In view of the rival contentions the point that arises for determination is, as to whether the writ petitioner committed any act of land grabbing.

There has been no gainsaying that R.W.4, Mr.K.Rajarathnam, was the original owner of the disputed plots. R.W.4 purchased the said property from one Dr.N.P.Kamat under a registered sale deed dated 12.08.1986. Plot No.63 admeasuring 292 square yards and plot No.64 admeasuring 305 square yards situate in Mallapur Village, Uppal Mandal, Kapra Municipality are the subject matter of dispute in between the parties *inter se.* While the respondents 2 and 3 claim that they purchased the said plots under Exs.A1 and A2 registered sale deeds bona fide for valuable consideration; it is the case of the writ petitioner that she purchased the said properties under Ex.B1 receipt-cum-agreement of sale and was put in possession of the same and that she constructed structures over the said plots in the year 1988 and had been running a school thereon. From the competing claims, the title over the subject matter of the application is obviously in dispute. It is no doubt true that an agreement of sale will not confer any title and title passes only under a registered conveyance deed. However, the claim of the writ petitioner is that she was put in possession of the disputed property under Ex.B1, receipt-cum-agreement, dated 27-02-1985, which is obviously antecedent to Exs.A1 and A2 sale deeds. Respondents 2 and 3 also claim that they have been put in possession under Exs.A1 and A2 sale deeds. The recitals made *inter alia* in both the sale deeds also show that possession was delivered under those two documents. Admittedly, the writ petitioner has been in possession of the property in dispute. However, she claims that she constructed the structures on the property in dispute way back in the year 1988. The case of the respondents 2 and 3 appears to be that she constructed the structures in the month of August, 1998 and has been

running the school thereon. When the petitioner came to be in possession of the property in dispute having regard to the rival contentions, becomes a crucial point.

The learned Special Court having been of the view that the acts of brining into existence bogus documents in the shape of Exs.B1 and B2 to defeat the registered sale deeds and illegally taking possession of the land of the applicants and raising unauthorized structures thereon together constitute an activity of land grabbing, eventually came to the conclusion that the writ petitioner was a land grabber within the meaning of Sections 2 (d) and (e) of the Act. In reaching the said conclusion, the learned Special Court was influenced very much that R.W.4, K.Rajarathnam, was the villain of the peace and he being the maternal uncle of the writ petitioner, the writ petitioner and said Rajarathnam together created the documents. Relationship *per se* cannot be the sole criterion to attribute collusion. In the evidence of P.Ws.1 and 2 there has been no whisper whatsoever about the collusion in between the writ petitioner and R.W.4, the original owner of the plots. As a matter of that Ex.B1 receipt-cum-agreement has not been assailed by the respondents 2 and 3. The execution whereof appears to be not in dispute. Both P.Ws.1 and 2 pleaded ignorance about the execution of Ex.B1. They, however, disputed Ex.B2, the second receipt. Well, when the execution of Ex.B1 was not in dispute, merely because R.W.4 is the maternal uncle of the writ petitioner, no collusion in between them can be attributed validly. The learned Special Court appears to have mainly swayed by the fact that respondents 2 and 3 purchased the property by means of a regular registered sale deeds and reached the conclusion that so as to defeat those two title deeds, the writ petitioner and R.W.4 colluded together and brought into existence Exs.B1 and B2 bogus

documents, oblivious of the fact that there has been no whisper in the evidence of respondents 2 and 3 that Ex.B1 is a bogus document. It is in evidence that the writ petitioner filed the suit for specific performance against R.W.4 and the plaint was returned on some office objection and it was represented later after a long time since the bundle was misplaced for some time. R.W.4 admits that he received notice from the Court in the suit filed by the writ petitioner. It is quite surprising no doubt that in the absence of Ex.B1, the original receipt-cum-agreement, how the suit could be filed before the civil Court. But that by itself cannot rule out the filing of the suit. It must be remembered here that whether Ex.B1, receipt-cum-agreement, would convey a valid title to the writ petitioner vis-à-vis respondents 2 and 3, who purchased the property under Exs.A1 and A2, registered sale deeds, is not the question; even as a matter of that, respondents 2 and 3 are *prima facie* the owners of the property in dispute having purchased the same under Exs.A1 and A2. Nevertheless, whether the writ petitioner can be called as a land grabber or not is the crucial question. This aspect has been totally lost sight of by the learned Special Court. Having been of the clear view that the respondents 2 and 3 are the owners of the property in dispute, the learned Special Court placed burden upon the writ petitioner to show that she is not the grabber of the land. In ordinary course, in the absence of Ex.B1, it is obvious that the respondent shall show before the Court that she is not the grabber of the land. In the wake of the plea taken by her that she has been put in possession by the original owner under Ex.B1 receipt-cum-agreement of sale, whether her possession can be considered as illegal, unauthorized or not shall have to be seen.

On the factum of possession no evidence worth the name except the assertions of the respective parties has been

adduced. The recital in Ex.B1 shows that the possession has been delivered under it by R.W.4 to the writ petitioner. Similarly, in Exs.A1 and A2 specific recital has been incorporated showing that possession has been delivered under those two documents. In that view of the matter, the recitals in these documents are no way helpful to reach a conclusion whether possession has been given under Ex.B1 to the writ petitioner or possession has been delivered under Exs.A1 and A2 to the respondents 2 and 3. Merely because no permission has been obtained from Grampanchayat for construction of the buildings, it cannot be said that the existing structures have not been constructed as claimed in the year 1988, but were constructed only in the year 1998, as claimed by the respondents 2 and 3. When Ex.B1 is not in dispute and not assailed by the respondents 2 and 3, who expressed ignorance of the existence of the documents, the document cannot be dubbed as a bogus document brought into existence collusively by the writ petitioner and R.W.4. It is not even suggested to the writ petitioner or R.W.4 in the cross-examination that Ex.B1 is an outcome of collusion and is a bogus document. In that view of the matter, we are of the considered view that the conclusion reached by the learned Special Court that the writ petitioner in collusion with R.W.4 brought into existence Exs.B1 and B2 bogus documents is not well founded and there has been no basis for reaching such a conclusion. Therefore, the very finding of the learned Special Court that creation of bogus documents itself constitute an act of land grabbing is quite unfounded and cannot be sustained.

In the absence of any suit for specific performance, the writ petitioner cannot claim any title over the property in dispute *qua* respondents 2 and 3 who are obviously the purchasers by means of regular and registered sale deeds. Agreement of sale

by itself cannot confer any title. The respondents 2 and 3 can claim the property at any time and recover possession of the same from the writ petitioner on the basis of their title deeds, but to say that the writ petitioner is a land grabber we are afraid, for the reasons hereinabove discussed, absolutely there has been no basis for reaching such a conclusion.

For the above reasons, the land grabbing case field by the respondents 2 and 3 must fail. In the result the writ petition is allowed and the impugned judgment of the learned Special Court in L.G.C. 5 of 1999 is hereby set aside. However, there shall be no separate order as to costs.

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T.CH.SURYA RAO, J.

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G.CHANDRAIAH, J.

Dated 25th April, 2007.

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THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

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AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO.17980 OF 2001

DATED 25—04—2007

Smt.K.Rani Pramila Devi,
W/o K.Abraham,
Aged about 52 years,
Occ: Housewife & Private Service,
R/o 1-6-222/4, Ramnagar,
Hyderabad. ... Petitioner

v.

The Special Court under A.P. Land Grabbing
(Prohibition) Act, rep. by its Chairman
At: Boorgula Ramakrishna Bhavan,
Tank Bund Road,
Hyderabad. And Others ... Respondents